

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

EUGENE NEAL KAPLAN, being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the 12th day of APRIL, 1976,
he served a copy of the within brief by placing the same
in a properly postpaid franked envelope addressed:

- ① Goldberger, Feldman + Breitbart
401 Broadway
New York, New York 10013
- ② Robert A. Katz, Esq.
Barlow, Katz + Barlow
233 Broadway
New York, New York 10007

And deponent further says that he sealed the said envelopeS
and placed the same in the mail box for mailing at One St.
Andrew's Plaza, Borough of Manhattan, City of New York.

Eugene Neal Kaplan

Sworn to before me this

12th day of April, 1976

Jeanette Ann Grayer
JEANETTE ANN GRAYER
Notary Public, State of New York
No. 24-1341573
Qualified in Kings County
Commission Expires March 30, 1977

76-1040

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

-v-

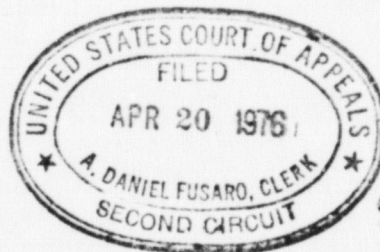
HERBERT RICKS,
WILLIAM FIGUEROA,

Defendant - Appellants.

APPELLANT'S REPLY BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

-v-

HERBERT RICKS, WILLIAM FIGUEROA,

Defendant - Appellants.

DEFENDANT'S REPLY BRIEF

POINT I

THE INTRODUCTION INTO EVIDENCE OF
THE JUNE 5, 1975 TRANSACTION CONS-
TITUTED A VIOLATION OF DEFENDANT
RICK'S 5th AMMENDMENT RIGHT, IN
THAT IT CONSTITUTED A PROSECUTION
OF A FELONY NOT PREDICATED UPON A
GRAND JURY INDICTMENT

The Fifth Ammendment of the United States Constitution guaranteed
to Appellants that:

"No person shall be held to answer for a capital, or otherwise
infamous crime unless on a presentment or indictment of a
Grand Jury..."

A reading of pages 14 and 15 of Appellee's brief make clear that the
transaction of June 5, 1975 was unknown to the Grand Jury who voted the
indictment against defendant Ricks, on October 10, 1975. (see A4, A7, A8)

The Grand Jury knew John Miller as an informant - participant in the
transaction of September 1975. It would appear that full extent of Mr. Miller's
/the

criminal activities in the June 1975 transaction remained unknown to the Grand Jury at the time of indictment.

It is submitted that had the Grand Jury examined the June 1975 transaction they might well have refused to vote an indictment. If, however, they wished to indict, John Miller would have been named as a defendant in the alleged June 1975 transaction.

It is further contended that over the vehement objection of defense counsel the trial Court allowed the Government to cast the June 1975 transaction as an "overt act". This was patent error. The Court should have limited the case to the September transaction or should have asked the Government to return to the Grand Jury for a superseding indictment for this different crime.

POINT II

This reply is filed after consultation with counsel for co-appellant. Co-appellant by counsel has indicated that he joins in its content and requests consideration of same in his behalf.

Dated: New York, N.Y.
April 19, 1976

Respectfully submitted,
BARLOW, KATZ & BARLOW
Attorneys for Appellant Ricks

JOYCE KRUTICK BARLOW
ROBERT A. KATZ, Of Counsel